

## Chapter 5 **Alternative Phase**

### *Chapter 5, Section 1*

#### **About this chapter**

##### **5.1.1 Potentially displaced employees who are members of a bargaining unit**

In this chapter, the term potentially displaced employees is used to refer to bargaining unit employees and their exclusive bargaining representative, as well as, non-bargaining unit employees. Additional process requirements or considerations by agencies for complying with collective bargaining agreements are included throughout this chapter. It is highly recommended that agencies collaborate closely with their liaison at the LRO throughout the competitive contracting process to ensure compliance with the state's collective bargaining agreements and any applicable labor laws.

##### **5.1.2 Purpose of this chapter**

###### **Guide agencies in notifying potentially displaced employees of its intent to pursue competitive contracting**

This chapter provides guidance to agencies in:

- Making a determination as to whether state employees will be displaced
- If applicable, comply with the terms of one or more collective bargaining agreements
- Meeting the notification requirements of RCW 41.06.142 (4) (a) and WAC 236-51-110
- Notifying potentially displaced employees consistently and completely using a standardized template

###### **Guide potentially displaced employees on how to prepare an alternative to competitive contracting**

This chapter provides guidance to potentially displaced employees in:

- Meeting the deadline to provide an alternative (if they decide to provide one) within 60 calendar days of notification as defined in RCW 41.06.142 (4) (a)
- Evaluating the agency's notification
- Communicating alternatives to purchasing services by contract and by when
- Requesting agency resources, not offered in the agency's notification, to develop alternatives to purchasing services by contract pursuant to WAC 236-51-115
- Responding consistently and completely using a standardized template

###### **Guide agencies on how to respond to an alternative to competitive contracting**

This chapter provides guidance to agencies in:

- Responding to potentially displaced employee offered alternatives consistently, completely, and within the time frames specified using a standardized template and pursuant to WAC 236-51-120 and, if applicable, any collective bargaining agreements
- Signaling the end of the alternatives phase.

### 5.1.3 Agency determination of applicability

#### **Prior to any notification, the agency must first determine if a competitive contracting award would displace state employees**

WAC 236-51-010 (11) provides a definition of a displaced employee. In addition, WAC 236-51-005 specifies when the competitive contracting bidding process is not to be applied. This chapter only applies when state employees would be displaced as a result of an award via the competitive contracting process.

### 5.1.4 How does the alternatives phase start?

#### **The alternatives phase starts with a formal notification**

Prior to soliciting bids from contractors for services currently provided by state employees, an agency must notify all potentially displaced employees in accordance with the requirements of RCW 41.06.142(4)(a), WAC 236-51-110 and, if applicable, any collective bargaining agreements. An example of an employee notification and brief description of each element can be found later in this chapter (see 5.1.5).

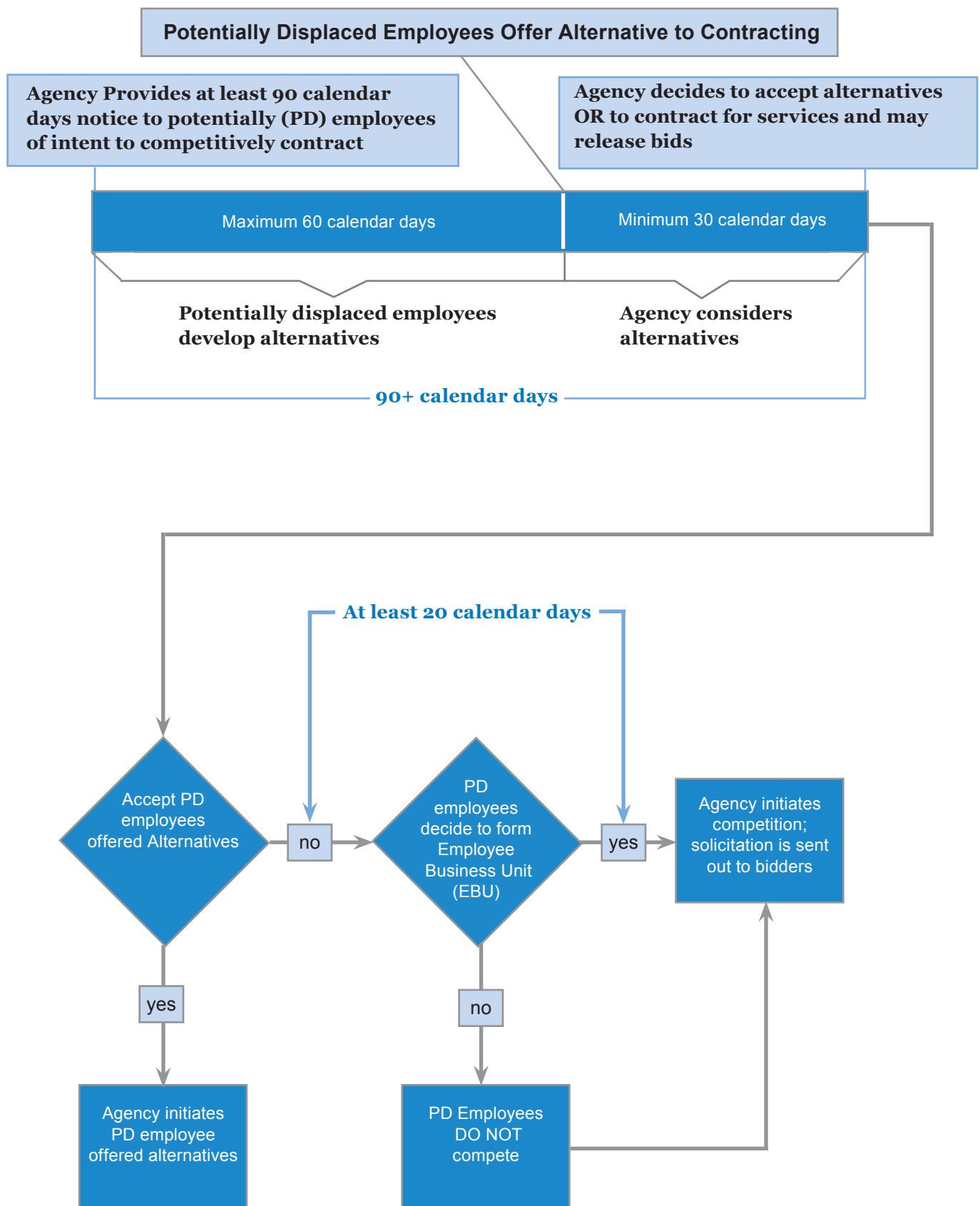
#### **What should the agency have done prior to notification**

This chapter assumes that agencies have been actively:

- Gathering “best practices” and benchmark information
- Reviewing current levels of service with customers, employees, and potential contractors
- Collecting and evaluating data on workplace standards and processes, as well as, customer needs and expectations
- Redesigning work processes or modifying service delivery to increase efficiency and effectiveness where immediate gains can be achieved
- Identifying services where potentially greater savings and efficiencies can be achieved

This chapter does not address initial assessment or pre-notification activities.

*Figure 26* is a visual reference of the competitive contracting process, including the alternatives phase described in this chapter.



**Figure 26**

### 5.1.5 Preparing the notification

#### What's included in the notification?

The agency should include the following elements in their notice to potentially displaced employees. These include the minimum requirements outlined in WAC 236-51-110:

- **Description of the Specified Service.** Define the service being submitted for competitive contracting and provide details around the service and Performance Work Statement (PWS)
- **Problem, Objective, or Opportunity.** State the business problem, objective, or opportunity the competitive contracting effort is expected to address.

#### Efficiency Example

1. **Business problem** - Current data show customer service levels are at 50% for on-time processing of XYZ payments. The XYZ payment arriving on-time is critical for the customer to meet their own reimbursement timelines. As a result of focus groups with key customers and benchmarking of peer organizations that are “best in class”, the agency finds that service levels of 90% on-time processing is achievable and therefore the expectation. Efforts to improve the existing process have not met with the desired results.
2. **Objective** - Attain service levels of 90% on-time or better for processing of XYZ payments.
3. **Opportunity** - As a result of this improvement, the agency will enhance its service delivery to its customers.

#### Savings Example

1. **Business Problem** - The agency's maintenance operation is funded at \$12M per year. An analysis of its fully allocated costs reveals a number of areas where the agency is not competitive. Other state agencies throughout the country have already competitively contracted with a number of service providers to deliver the same service currently done by state employees with excellent results in both cost and quality. Efforts to reduce the cost of the existing service have not met with the desired results.
2. **Objective** - Save \$3-5M per year as a result of competitive solicitation and contracting for the agency's maintenance.
3. **Opportunity** - As a result of achieving the above savings, the agency expects not to have to cut its program of providing hot meals to seniors and vulnerable adults.
  - **Determination of a Competitive Market.** The agency outlines, in a brief statement, its determination and rationale that a competitive market exists (see WAC 236-51-100)
  - **Identification of Potentially Displaced Employees.** A listing of all potentially displaced employees (see 5.1.3). If potentially displaced employees

are part of a bargaining unit, then the exclusive bargaining representative is also identified and copied on any communication.

- **Potentially Displaced Employees May Offer Alternatives.** A statement that employees who would be laid off or assigned to a different job classification as a result of a competitive contracting award will have sixty calendar days from the date of notification to offer alternatives to competitive contracting as described in RCW 41.06.142(4)(a) and the agency contact to whom alternatives are submitted to. The date of notification, along with other dates and deadlines should be specified in the original notification per the template provided.

**Note:** *The agency's acceptance of any terms of an alternative proposal submitted by potentially displaced employees represented by a bargaining unit that is in conflict with applicable collective bargaining agreement(s) is conditional upon resolution of such conflict with the appropriate exclusive bargaining representative(s).*

- **Who May Compete in the Competitive Solicitation?** Only potentially displaced employees may offer alternatives or form one or more EBU's for the purposes of bidding on a competitive contracting solicitation. A potentially displaced employee is an employee who would be laid off or assigned to a different job classification as a result of a competitive contracting award.
- **The Amount and Type of State Resources.** State Resources may be allocated by the agency to assist potentially displaced employees in developing alternatives within the time frame described. This includes, but is not limited to:
  - Specific agency staff assigned to potentially displaced employees for assistance in developing their alternative
  - Finance, Human Resources, and other contacts and consulting available
  - Private Contractor Consultants paid for by the agency
  - Space, Computers, Data, Administrative Support, etc.
- **Date and time of notification:** Consistent with the requirements in the law and WAC 236-51, the agency shall specify the deadline for providing alternatives and the date the agency plans to issue its solicitation. The date and time on the notification serves as the official start of the 90 plus calendar day "prior to requesting bids" notification period and the 60 calendar day "employees to offer alternatives" timeline referred to RCW 41.06.142 (4) (d). Figure 26 shows the timeline. WAC 236-51-010 (10) provides a definition for "day" which will be used to determine specific dates.
- **Template for Notification:** A template is provided as an example. It contains all of the required elements and agencies are encouraged to copy it exactly. Dates are provided as a reference only (see <http://www.wa.gov/correspondence/exec/letter2.html> for specific executive correspondence guidelines).



## Agency Letterhead

November 14, 2005 (insert applicable date)

TO: State Employee, Title **(include Exclusive Bargaining Representative if applicable)**

FROM: Jane Smith, Director

SUBJECT: **Notice of Intent to Competitively Contract**

REF:

- RCW 41.06.142
- WAC 357- 43 What definitions apply to this chapter of the civil service rules?
- WAC 236.51 Competitive Contracting
- Collective Bargaining Agreement (if applicable)

I am writing to inform you of the agency's intent to competitively contract the service you provide as an employee of the state **(describe service)**. The agency is pursuing competitive contracting to *improve efficiency or save costs* **(select one or both that apply)**. For more detail see paragraph three below.

You have **60 calendar days (January 14, 2006) (insert applicable date)** from the date of this letter to offer individually or as a group any alternative that addresses the business problem, objective, and opportunity detailed below **(when potentially displaced employees are members of a bargaining unit include the following: Please note that if the terms of your alternative proposal conflict with those of applicable collective bargaining agreement(s), acceptance of your proposal will be conditional upon resolution of such conflict with the appropriate exclusive bargaining representative.** Please send any alternatives to: **Jane Smith, Director.**

After considering all alternatives offered, the agency may decide to proceed with soliciting bids from individuals, nonprofit organizations, businesses, employee business units, or other entities to provide the service(s). Potentially displaced employees may then compete in competitive contracting as one or more employee business units. The earliest bids may be solicited is **90 calendar days (February 12, 2006) (insert applicable date)** from the date of this notice.

The agency has tentatively set the date of **March 15, 2006 (insert applicable date)** as its intended date to solicit bids. This date may change depending on the agency's needs including time to evaluate employee-offered alternatives or to provide a minimum of 20 calendar days for potentially displaced employees to consider forming an EBU after rejection of any offered alternative commensurate with the requirements of WAC 236-51-120 **(when potentially displaced employees are members of a bargaining unit include the following: or to provide at least 21 calendar days notice to potentially displaced employees' exclusive bargaining representative.)** If a change in the intended day to solicit bids is necessary, the agency will notify all persons on the original distribution list of this letter in writing.

- **Description of the Service:** Here the agency should provide a detailed description of the service.
- **Problem, Objective, or Opportunity:** The agency should follow the format of the example provided in 5.1.5.
- **Determination of a Competitive Market:** This brief statement articulates the competitive field of service providers capable of providing the service being competitively contracted.
- **Potentially Displaced Employees:** All the employees should be listed along with title/function.
- **The Amount and Type of State Resources Allocated:** The agency needs to be very specific so the potentially displaced employees can begin immediately.

cc: LRO Liaison **(or others as required)**

*Chapter 5, Section 2***Competitive contracting alternatives response****5.2.1 Who can generate an alternative?****Alternatives may come from individual or groups of potentially displaced employees**

An alternative to competitive contracting may only come from potentially displaced employees.

- Potentially displaced employees are strongly advised to review in its entirety RCW 41.06.142, WAC 236-51, and WAC 357-43 to familiarize themselves with the requirements and process of competitive contracting.
- Potentially displaced employees, individually or as a group, may offer alternatives. Potentially displaced employees will be offered, by the agency, state resources to assist them in preparing an alternative within the sixty calendar day window. Additional state resources required by potentially displaced employees must be requested from and approved by the agency pursuant to WAC 236-51-115.
- Potentially displaced employees may utilize non-state resources without limit or approval from the agency provided the use of these non-state resources does not conflict with any law or rule.

**5.2.2 Elements of the competitive contracting alternative response****What are the minimum elements of a competitive contracting alternative response?**

- The competitive contracting alternative response should be detailed enough for the agency to determine the viability of the alternative but may include assumptions provided that they are so identified. This chapter includes a template for potentially displaced employees to communicate the following elements of their alternative response:
  - Recommended changes to the service that will address the problem, objective, and opportunity described in the notification;
  - If potentially displaced employees are part of a bargaining unit, terms different from those in any applicable collective bargaining agreements;
  - Required investments (if any);
  - How success will be measured;
  - Why the alternative should work; and
  - Transition plan on how to get there and by when.
- Potentially displaced employees may include additional pages or documentation that supports their alternative.
- Template for Response: A template is provided as an example. It contains all of the required elements and potentially displaced employees are encouraged to copy it exactly. Dates are provided as a reference only, (see <http://sw.wa.gov/correspondence/exec/letter2.html> for specific executive correspondence guidelines).



## Agency Letterhead

January 13, 2006 **(insert applicable date)**

TO: Jane Smith, Director

FROM: Janet Doe, Title (Exclusive Bargaining Representative if applicable)

SUBJECT: **Alternative to Competitive Contracting**

REF:

- Notification by Jane Smith, Director dated November 14, 2005
- RCW 41.06.142
- WAC 357-43 What definitions apply to this chapter of the civil service rules?
- WAC 236.51 Competitive Contracting
- Collective Bargaining Agreement (if applicable)

Pursuant to the references above, this memorandum represents the alternative from the following potentially displaced employees: **(list all applicable)**.

- **Recommended changes to service that address the problem, objective, and opportunity:**  
Here potentially displaced employees must address specifically what is stated in the notification.
- **(When potentially displaced employees are members of a bargaining unit include the following if applicable: Terms different from those in any applicable collective bargaining agreements.**
- **Required investments:** The cost versus the benefit involved. The investment must support the item above and provide a return.
- **How success will be measured:** A set of critical success factors that communicate results that show the objective is being met and the opportunity realized.
- **Why alternative should work:** This should provide a convincing argument for the agency to accept the proposal.
- **Preliminary transition plan on how to get there and by when:** Here the potentially displaced employees provide a transition timeline to get to the desired results. This should also include time to transition staff, acquire equipment, and training.

cc: LRO Liaison (or others as required)



*Chapter 5, Section 3***Agency response to competitive contracting alternative****5.3.1 Form, Method, and Timing of an Agency Response****Form & Method**

The agency will respond to all alternatives offered in writing (WAC 236-51-120). Templates for acceptance, rejection, and no alternatives received are included below: (see <http://sw.wa.gov/correspondence/exec/letter2.html> for specific executive correspondence guidelines).

**Timing**

WAC 236-51-120 states that the agency must respond to all alternatives offered. If no alternatives are offered within the 60 calendar days allotted, the agency shall notify all potentially displaced employees that it will proceed with its solicitation. The agency may need to extend its intended date to solicit bids for a number of reasons.

***For example:***

- To allow for more time to consider any alternatives presented
- To provide at least 21 calendar days notice to potentially displaced employees' exclusive bargaining representative (when potentially displaced employees are members of a bargaining unit)
- Allow for more time in the development of the solicitation
- To accommodate staff schedules
- To provide the required minimum of 20 calendar days specified in WAC 236-51-120 for potentially displaced employees to form one or more EBUs and notify the agency per WAC 236-51-200

In any event, the agency may not solicit bids for competitive contracting any earlier than 90 calendar days from the date of notification.



## Agency Letterhead

February 15, 2006 **(insert applicable date)**

TO: Janet Doe, Title **(Exclusive Bargaining Representative if applicable)**

FROM: Jane Smith, Director

SUBJECT: **Acceptance of Alternative to Competitive Contracting**

REF:

- Alternative to Competitive Contracting dated January 13, 2006
- Notification by Jane Smith, Director dated November 14, 2005
- RCW 41.06.142
- WAC 357-43 What definitions apply to this chapter of the civil service rules?
- WAC 236.51 Competitive Contracting
- Collective Bargaining Agreement (if applicable)

This letter is in response to the alternatives submitted by you and your team on January 13, 2006 **(insert applicable date)**. The agency has considered the alternative presented and has decided to accept it as an alternative to competitive contracting. **(In the event that potentially displaced employees are members of a bargaining unit and their proposal includes terms that are in conflict with the terms of any applicable collective bargaining agreements include the following: Acceptance of your proposal is conditional upon resolution of any conflicts with the appropriate exclusive bargaining representative(s)).** In the coming weeks, we will outline a performance agreement and plan to implement the proposed alternative.

If the original objective or goal of the alternative is not met within the time specified in the performance agreement, the agency may then decide to resume the competitive contracting process.

cc: LRO Liaison **(or others as required)**



## Agency Letterhead

February 15, 2006 **(insert applicable date)**

TO: Janet Doe, Title (Exclusive Bargaining Representative if applicable)

FROM: Jane Smith, Director

SUBJECT: **Rejection of Alternative to Competitive Contracting**

REF:

- Alternative to Competitive Contracting dated January 13, 2006
- Notification by Jane Smith, Director dated November 14, 2005
- RCW 41.06.142
- WAC 357-43 What definitions apply to this chapter of the civil service rules?
- WAC 236.51 Competitive Contracting
- Collective Bargaining Agreement (if applicable)

This letter is in response to the alternatives submitted by you and your team on January 13, 2006 **(insert applicable date)**. After careful consideration, the agency is rejecting the alternative offered by you and your team and is proceeding with soliciting bids on the date indicated on the notification. That date is **March 15, 2006 (insert applicable date)**.

All potentially displaced employees may form one or more EBUs for the purpose of submitting a bid or bids to perform the services. WAC 236-51-200 provides the requirements for those wanting to form an EBU including the requirements to notify Jane Smith, Agency Director in writing prior to the intended day the agency will solicit bids. That date is **March 15, 2006 (insert applicable date)**. This agency will not consider EBU bids that do not provide all of the required information or notifies the agency of its formation after the solicitation has been issued. Potentially displaced employees represented by a collective bargaining agreement should consult the terms of their agreement and/or their exclusive bargaining representative for additional assistance.

The Department of Personnel will have available to EBUs training on the competitive contracting bidding process and general bid preparation. If training and other resources are needed by the EBU, they must be specified by the EBU in accordance with WAC 236-51-200.

Prior to the effective date of an agreement between the agency and either an EBU or an external bidder, potentially displaced employees will be subject to the agency's layoff procedure, pursuant to WAC 357-43. Specific questions about the layoff procedure may be directed to your HR representative, Sandy Jones.

cc: Sandy Jones, HR  
LRO Liaison **(or others as required)**



## Agency Letterhead

February 15, 2006 **(insert applicable date)**

TO: State Employee, Title (Exclusive Bargaining Representative if applicable)

FROM: Jane Smith, Director

SUBJECT: **No Alternatives to Competitive Contracting Received**

REF:

- Notification by Jane Smith, Director dated November 14, 2005
- RCW 41.06.142
- WAC 357-43 What definitions apply to this chapter of the civil service rules?
- WAC 236.51 Competitive Contracting
- Collective Bargaining Agreement (if applicable)

This letter is to inform you that no alternatives to soliciting bids for competitive contracting have been received. As such, this agency is proceeding with soliciting bids on the date indicated on the notification. That date is **March 15, 2006 (insert applicable date)**.

All potentially displaced employees may form one or more EBUs for the purpose of submitting a bid or bids to perform the services. WAC 236-51-200 provides the requirements for those wanting to form an EBU including the requirement to notify Jane Smith, Agency Director in writing prior to the intended day the agency will solicit bids. That date is **March 15, 2006 (insert applicable date)**. This agency will not consider bids from an EBU that does not provide all of the required information or notifies the agency after the agency has issued the solicitation. Potentially displaced employees represented by a collective bargaining agreement should consult the terms of their agreement and/or exclusive bargaining representative for additional assistance.

The Department of Personnel will have available to EBUs training on the competitive contracting bidding process and general bid preparation. If training and other resources are needed by the EBU, they must be specified by the EBU in accordance with WAC 236-51-200.

Prior to the effective date of an agreement between and agency and either an EBU or an external bidder, potentially displaced employees will be subject to the agency's layoff procedure, pursuant to WAC 357-43. Specific questions about the layoff procedure may be directed to your HR representative Sandy Jones.

cc: Sandy Jones, HR

LRO Liaison **(or others as required)**

### **5.3.2 Considerations for Implementing Employee Offered Alternatives**

#### **This will not be business as usual**

Implementation of the employee offered alternatives represents a performance agreement with expectations and consequences if objectives are not met. Therefore the agency and the employees need to take responsibility to regularly review results and take corrective action, if necessary, to stay on course.

### **5.3.3 An Agency's Response to an EBU's Formation**

An EBU becomes a bidder in a competitive contracting solicitation by notifying the agency of its formation as required by WAC 236-51-200. As a result of that notification, the agency is required to respond to the EBU either affirming its planned use of state resources to prepare its bid or modify it based on available state resources and the needs of the agency to meet its mission (reference WAC 236-51-205). When the EBU's membership includes one or more members of a bargaining unit, the agency will include mention that acceptance of any proposal submitted by that EBU that includes terms that are in conflict with the terms of any applicable collective bargaining agreement(s) will be conditional upon resolution of the conflict with the appropriate exclusive bargaining representative(s). A sample format is included on the next page.



## Agency Letterhead

March 10, 2006 **(insert applicable date)**

TO: Jane Smith, Director

FROM: State Employee, Title **(Exclusive Bargaining Representative if applicable)**

SUBJECT: **Receipt and acknowledgement of intent to compete; EBU (list all members)**

REF:

- Notification by Jane Smith, Director dated November 14, 2005
- RCW 41.06.142
- WAC 357-43 What definitions apply to this chapter of the civil service rules?
- WAC 236.51 Competitive Contracting
- Collective Bargaining Agreement (if applicable)
- Agency notice of either “no alternative received” or “alternative rejected” dated February 15, 2006.
- EBU notice of formation (as required in WAC 236-51-200)

The agency has received notice of your decision to compete in the competitive contracting solicitation referenced in the notice sent by me to all potentially displaced employees on November 14, 2005. As required by WAC 236-51-205 this agency **(insert one of the following: accepts your EBU’s resource plan to prepare its bid in its entirety or accepts your EBU’s resource plan with the following modifications.** The Department of Personnel will have available to EBUs training on the competitive contracting bidding process and general bid preparation. That training will be scheduled as soon as possible to allow your EBU enough time to prepare its bid.

**If one or more members of an EBU belong to a bargaining unit, add the following: Please note that if the terms of your EBU’s bid conflict with the terms of any applicable collective bargaining agreement(s), acceptance by this agency will be conditional upon resolution of such a conflict with the appropriate exclusive bargaining representative(s).**

Prior to the effective date of an agreement between and agency and either an EBU or an external bidder, potentially displaced employees will be subject to the agency’s layoff procedure, pursuant to WAC 357-43. Specific questions about the layoff procedure may be directed to your HR representative Sandy Jones.

cc: Sandy Jones, HR

LRO liaison **(or others as required)**